

Re Bolton; Ex parte Beane (1987) 162 CLR 514

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Facts

- Douglas Beane was a US Marine who deserted the United States armed forces in Vietnam on 28 February 1970. He arrived in Australia on 28 April 1970.
- On 22 November 1982, the US requested Australia to arrest Beane. Beane was arrested under warrant.
- The parties agreed that the arrest and detention was lawful only if the request was authorised by section 19(1) of the *Defence (Visiting Forces) Act 1963* (Cth) (**the Act**).
- Section 19(1) of the Act stated:
 - "Where the designated authority of a country in relation to which this section applies, by writing under his hand, requests an authorized officer for assistance in the apprehension of a member of the forces of that country who is a deserter or an absentee without leave from those forces, the authorized officer may, in his discretion, issue a warrant in accordance with the prescribed form authorizing a member or special member of the Australian Federal Police or a member of the Police Force of a State or of a Territory or any member of the Defence Force to arrest that deserter or absentee."

Issues

- Whether steps taken for the apprehension of Beane under the Act were lawfully taken.

Held

- The High Court issued a writ of habeas corpus.
- The High Court held that Beane was entitled to his freedom. He had not breached the Act.
- In the absence of statutory provision to the contrary, a person in Australia who has not breached Australian law is entitled to their freedom.
- Section 19(1) is normally construed in the context of the Act as being limited to persons who deserted without leave from a visiting force present in Australia.
- In this respect, Gaudron J stated that:
 - "Although the words of s. 19(1) are sufficiently wide to cover a deserter or an absentee without leave from the forces of a country to which the section applies, notwithstanding that he deserted or absented himself outside Australia, a question necessarily arises as to whether the provision should be so construed in the absence of statutory authority for the representatives of that foreign country to exercise jurisdiction in Australia over the deserter or absentee or to detain him in custody in Australia, he not being a member of a "visiting force" as defined in section 5 of the *Defence (Visiting Forces) Act 1963* (Cth)."
- Section 8 of the Act stated that jurisdiction applies to:

- "members of any visiting force of that country; and
- all other persons who, being neither Australian citizens nor persons ordinarily resident in Australia, are for the time being subject to the service law of that country otherwise than as members of that country's forces."
- Beane was not part of a visiting force and was a permanent resident of Australia. He was entitled to his freedom on proper construction of the Act.

Quotes

"The Constitution of the Australian Commonwealth does not contain broad declarations of individual rights and freedoms which deny legislative power to the Parliament, but the courts nevertheless endeavour so to construe the enactments of the Parliament as to maintain the fundamental freedoms which are part of our constitutional framework. It is presumed that that is the intention of Parliament, though the courts acknowledge that the balance between the public interest and individual freedom is struck not by the courts but by the representatives of the people in Parliament. Unless the Parliament makes unmistakably clear its intention to abrogate or suspend a fundamental freedom, the courts will not construe a statute as having that operation."

(Brennan J at page 523)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1987/HCA/12>

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